

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

INTERMOOR, INC.,

Plaintiff,

VS.

DELMAR SYSTEMS, INC.,

Defendant.

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CIVIL ACTION NO. H-05-3401

MEMORANDUM AND ORDER

Pending before the Court is Defendant's motion to dismiss this declaratory judgment action, pursuant to FED. R. CIV. P. 12(b)(1), for lack of subject matter jurisdiction. Defendant argues that no justiciable controversy exists. After considering the parties' filings and the applicable law, the Court finds that the motion, Docket No. 11, should be and hereby is **DENIED WITHOUT PREJUDICE TO REFILING**. In accordance with *Kaufman v. W.U. Tel Co.*, 224 F.2d 723, 725 (5th Cir. 1955), *cert. denied*, 350 U.S. 947 (1956), and with 28 U.S.C. § 1653, the Court hereby **ORDERS** Plaintiff to amend its Complaint within ten (10) days of the entry of this Memorandum and Order, to allege all facts asserted as support for jurisdiction in Plaintiff's opposition to the motion to dismiss.

IT IS SO ORDERED.

SIGNED at Houston, Texas, on this the 27th day of March, 2006.

A handwritten signature in dark ink, appearing to read "Keith P. Ellison", is written above a horizontal line.

KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE

**TO INSURE PROPER NOTICE, EACH PARTY WHO RECEIVES
THIS ORDER SHALL FORWARD A COPY OF IT TO EVERY
OTHER PARTY AND AFFECTED NON-PARTY EVEN THOUGH
THEY MAY HAVE BEEN SENT ONE BY THE COURT.**